UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF FLORIDA
PENSACOLA DIVISION

IN RE:

MICHAEL EDWARD CAMFERDAM, CASE NO.: 18-30160-KKS
CHAPTER: 7

Debtor.
_____/

RAYMOND JAMES AND ASSOCIATES, INC. ADV. NO.: 18-03009-KKS

Plaintiff,
v.

MICHAEL CAMFERDAM,

Defendant.
_____/

ORDER DENYING, WITHOUT PREJUDICE, *RAYMOND JAMES' MOTION FOR PROTECTIVE ORDER* (DOC. 47)

THIS MATTER is before the Court on *Raymond James' Motion for a Protective Order,* supplement and Affidavit in support (collectively referred to as "Motion") and Defendant's response ("Response," Doc. 58).[1] For the reasons set forth below, the Motion is denied, without prejudice, subject to the agreement the parties have apparently reached

[1] Docs. 47, 50 and 53.

on the Motion, which they apparently intend to announce at the hearing on the Motion scheduled for May 15, 2019.[2]

> In the Affidavit in support, counsel for Plaintiff certified that
>
> [p]rior to filing the [Motion], Raymond James undertook *good faith efforts to confer with Defendant regarding the scope of discovery* … in an attempt to limit discovery to the remaining pending claims in the Adversary Proceeding… .[3]

This certification is insufficient.

The Federal Rules of Bankruptcy Procedure provide that when seeking a protective order, the movant must include a certification that it "has *in good faith conferred or attempted to confer with other affected parties in an effort to resolve the dispute without Court action*."[4] This Court's local rules provide that in adversary proceedings, "counsel for the moving party *shall confer* with counsel for the opposing party and shall file with the Court . . . a statement certifying that he has *conferred* with counsel for the opposing party in a good faith effort to resolve by

[2] As the Court was in the process of finalizing this Order after having spent considerable time and resources thoroughly reviewing the Amended Complaint, the Motion and other related pleadings, the Court was advised that the parties have resolved the discovery dispute that prompted the Motion. The Court nonetheless issues this Order to ensure that the attorneys and parties will have a much clearer perception of how the Court views discovery disputes such as the one here.

[3] Doc. 53 (emphasis added).

[4] Fed. R. Civ. Pro. 26(c)(1) made relevant by Fed. R. Bankr. P. 7026 (emphasis added).

agreement the issued raised . . ."[5] Rule 7.1 (B) of the Local Rules for the District Court for the Northern District of Florida provides:

> [b]efore filing a motion raising an issue, an attorney for the moving party must attempt in good faith to resolve the issue through a meaningful conference with an attorney for the adverse party. The adverse party's attorney must participate in the conference in good faith. The conference may be conducted in person, by telephone, in writing, or electronically, but an oral conference is encouraged. *An email or other writing sent at or near the time of filing the motion is not a meaningful conference*.[6]

The Motion is devoid of any certification that the parties conferred, as the applicable rules require.

It has become abundantly clear from the instant Motion and prior motions filed in this adversary proceeding that a more direct approach to discovery disputes is needed. This Order is designed to instruct counsel and ensure that going forward the parties resolve, by agreement wherever possible, discovery and other disputes and follow the rules requiring that they actually *confer* before filing similar motions. With these goals paramount, this Order shall give the parties a more thorough

[5] N.D. Fla. LBR 7007-1(A) (emphasis added).
[6] N.D. Fla. Loc. R. 7.1(B)(emphasis added). A motion or supporting memorandum must contain a certificate that the moving party complied with the attorney conference requirement. N.D. Fla. Loc. R. 7.1(C); N.D. Fla. LBR 1001-1(D) provides that the Local Rules of the United States District Court, Northern District of Florida shall apply in all bankruptcy cases, including contested matters.

understanding of the Court's view of most discovery disputes.[7]

In the undersigned's experience, from nearly thirty years as a litigator and now numerous years as a judge, the great majority of discovery disputes arise when one or both sides exhibit: (1) failure to grasp, or disdain for, the law, the rules, or the facts, (2) lack of professionalism, (3) lack of civility, (4) refusal to extend common courtesy to a fellow professional (and therefore to the Court), (5) bad faith, or (6) some or all of the above. It is sad to say, but true, that it is rare to see a truly justiciable discovery issue requiring thoughtful consideration and resolution by the Court which the parties have tried, *in good faith,* to resolve before requesting the Court's intervention.

The Court is well aware that lawyers may do and say things during discovery that they would not dream of doing or saying if a judge were present. Certain conduct is unprofessional: counsel not returning telephone calls, always being "unavailable," refusing to agree to reasonable requests from opposing counsel on the basis that "my client won't let me," screening every communication through two layers of staff,

[7] This Order applies to the issues raised in the instant Motion as well as to pending and future discovery disputes.

firing off e-mails "confirming" something that was not agreed, and sending emails demanding action in an unreasonably short time, under threat of "filing something with the court."

Failure of counsel to effectively communicate, or to communicate other than via email or in letters, will not be tolerated; it does a disservice to the parties and the Court. The Court has no interest in reading email exchanges between counsel complaining about not having heard back from a discovery request, a phone call or a prior email. If such communications are attached to discovery motions, they will either be ignored or stricken from the record.

Claims of ethical violations are not taken lightly. If you have made such an accusation against opposing counsel, you have done so at your peril if you are not prepared to prove it.

Fishing expeditions and questions and requests unlimited in time or place are disfavored, as are totally unsupported objections to discovery based on the usual boilerplate assertions that the request is overly broad or unduly burdensome, or that the information sought is irrelevant, privileged, or is unlikely to lead to the discovery of admissible evidence.

A party must present something to back up this type of objection or it will be overruled.

If a party has answered a discovery request "subject to" or after "reserving" an objection (or similar phrase), that party has waived the objection. A party either has a sustainable objection or it does not. Parties cannot have it both ways.[8] Counsel should not assume that they will prevail on an argument that a common English word is "vague" or "ambiguous." If a party asserts that something is burdensome, that party must accompany the objection with facts to show it. In short, if discovery demands or responses are not well thought out and clearly presented, you are on shaky ground indeed.

Because the Court has not ruled on the merits of the Motion, and because the parties have apparently resolved the issues raised in the Motion by agreement to be announced at the hearing, the below provisions will pertain to any future discovery disputes in this adversary

[8] *Pensacola Firefighters' Relief & Pension Fund Bd. of Trs. v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 3:09CV53/MCR/MD, 2009 WL 3294002, at *2 n.1 (N.D. Fla. Oct. 13, 2009)(citing "*Meese v. Eaton Mfg. Co.*, 35 F.R.D. 162, 166 (N.D. Ohio 1964)(holding that '[w]henever an answer accompanies an objection, the objection is deemed waived, and the answer, if responsive, stands.'). *See also,* Wright, Miller & Marcus, *Federal Practice and Procedure: Civil* § 2173: 'A voluntary answer to an interrogatory is also a waiver of the objection.'").

proceeding. For the reasons stated,

It is ORDERED:

1. *Raymond James' Motion for Protective Order* (Doc. 47) is DENIED, without prejudice, subject to any agreement the parties may have reached in resolution of the Motion prior to entry of this Order.

2. For future discovery disputes, if any:

a. If counsel can completely resolve issues pertaining to discovery disputes without an in-person conference, the Movant should file a notice withdrawing discovery-related motions or a stipulation addressing all pending discovery disputes.

b. If the issues are not completely resolved without an in-person conference, lead counsel or attorneys with full authority to make decisions and bind the client(s) without later seeking approval from a supervising attorney or some other decision maker will meet personally or by video conference and in good faith attempt to resolve or narrow the dispute(s). If counsel cannot agree on a time, date or location for this conference, they will meet in the witness room outside the Courtroom at the United States

Bankruptcy Courthouse in Tallahassee, Florida. The parties will schedule this conference at a time when the undersigned is in Chambers or available via telephone, so that if a dispute cannot be resolved during the meeting the parties can request the Court to convene an immediate conference or hearing at which to resolve the dispute.

c. If the attorneys meet at the Courthouse, lead counsel will attend. No later than three (3) business day after such conference, the parties will jointly file the results of their discussion, including all agreements, undertakings, promises and/or concessions, and will specifically identify any issues that remain for determination by the Court, without further briefing or argument.

d. If the Court rules, with or without a hearing, on motions to compel discovery and/or motions for protective order, the party prevailing overall, as determined by the Court, will be awarded its costs and expenses after the non-prevailing party has been given the opportunity to be heard. The costs will likely include, but not be limited to, (1) the time required to file pleadings,

prepare for, travel to and attend the required meeting, and, if necessary, the time required to prepare for, travel to, and attend the hearing, and (2) the actual cost of Court reporting, travel, sustenance and accommodations for all of the above. The costs will be paid by the non-prevailing attorney and not charged to the client unless counsel provides written proof that the client insisted on going forward against counsel's advice.

e. In the unlikely event that a discovery dispute turns out to be one of those rare cases involving a truly justiciable issue, such as a case of first impression, the Court will not impose sanctions. The Court will decide whether that criterion is met.

3. Counsel will provide a copy of this order to their respective clients and any other attorneys within their firms that will be or have been active in this proceeding.

DONE and ORDERED on May 15, 2019.

KAREN K. SPECIE
Chief U. S. Bankruptcy Judge

cc: all parties in interest

Counsel for Plaintiff, Raymond James & Associates, Inc. is directed to serve a copy of this Order on interested parties and file proof of service within 3 days of the entry of this Order.